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FILED
DEC 31 1943
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1943

NO. 568

TERRY LINNELL HARPER, Petitioner

versus

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT

COUNSEL FOR PETITIONER:
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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays, through his counsel, that the writ of certiorari issue to review the final judgment of the United States Circuit Court of Appeals, Fifth District, in the above case, entitled No. 10620, in the United States Circuit Court of Appeals, Fifth Circuit. Final judgment in said case in the United States Circuit Court of Appeals was rendered and entered on the 18th day of October, 1943. The motion for a rehearing was denied on December 3rd, 1943, the opinion and decision in question affirming the judgment of the trial court.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 3, 1943. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. In a trial for a failure to report as a conscientious objector for induction under civilian direction, where the defendant's sole defense is that the order directing him to report is invalid because the facts in his particular case do not justify the issuance of such an order, is the defendant under the Selective Training and Service Act of 1940, as amneded, entitled to have the jury try de novo the merits of his classification under the Act?

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Selective Training and Service Act of 1940, as amended, and the Sections of the Constitution of the United States, are hereinafter set forth and properly referred to.

STATEMENT

Petitioner was indicted on the 9th day of February, 1943, in the United States District Court for the Southern District of Georgia, in one count charging that, having been classified in Classification IV-E by his Local Board at Hazlehurst, Georgia, being a registrant under the Selective Training and Service Act of 1940, he did unlawfully and willfully fail and neglect to report as assigned by said Local Board to work of national importance under civilian direction. (R. 2).

To this indictment petitioner, a Jehovah Witness, entered his plea of not guilty under the contention that he was a "duly ordained minister" and consequently should have been placed in Classification IV-D, under which classification he was not duty bound to report as ordered for the reason that as such recognized minister under Classification IV-D the only duty resting on him was that of registering. Through his counsel, petitioner, in the trial court, contended that the Local Board acted arbitrarily and capriciously, thereby giving him a valid reason for failure to report for induction (R. 60). The Government contended that the Local Board was the proper tribunal to determine the classification of registrant and its determination of this fact was conclusive on all parties concerned, and not subject to review.

Upon conclusion of the evidence, which included certain facts touching the action of the Local Board in arriving at its classification, the trial court, upon motion of the Assistant District Attorney, excluded from the consideration of the jury all evidence, documentary and otherwise, respecting the findings of the Local Board.. (R. 213).

The record further shows that the trial judge instructed the jury in excluding from its consideration all evidence touching the actions of the Local Board in classifying registrant, that the evidence did not sustain petitioner's contentions that

the Board did act in an arbitrary and capricious manner. (R. 200).

Petitioner contended and here and now contends that the Selective Training and Service Act of 1940, as amended, does not vest in the trial judge the right, power, and authority to arbitrarily make such findings and so instruct the jury and, in the absence of such power and authority, the right and power to determine such rests solely in the hands of the jury.

At the time said motion was made to exclude from the consideration of the jury all evidence touching the findings of the Local Board, petitioner, through his counsel, stated to the Court that to exclude from the jury the right to go behind the decision of the Local Board would sweep from petitioner his only defense to the indictment; that to so hold would be equivalent to recognizing the fact that petitioner had already been convicted of the offense charged in the indictment through the holding of the local board; and that to so hold and rule on the part of the trial court would deprive petitioner of his constitutional rights to a jury trial, would be in direct conflict with the "due process" clause, and would deprive petitioner of his religious freedom, all as set out in the Federal Constitution. (R. 114).

Upon the ruling of the Court, as aforesaid, the case as submitted to the jury resulted in the conviction of petitioner on the 10th day of March, 1943.

Thereafter, on the 14th day of July, 1943, a Bill of Exceptions was filed to the United States Circuit Court of Appeals, Fifth District, and on the 18th day of October, 1943, that court rendered its decision affirming the judgment of the trial court.

On the 8th day of November, 1943, a motion for a rehearing was filed in the United States Circuit Court of Appeals, Fifth Circuit, and on the 3rd day of December, 1943, said motion for a rehearing was denied.

On the 16th day of December, 1943, the United States Circuit Court of Appeals stayed the mandate of the lower court and allowed notice of Certiorari to the Supreme Court of the United States.

REASONS WHY THE WRIT OF CERTIORARI SHOULD ISSUE

1. It was an error on the part of the lower court to exclude from the consideration of the jury all evidence touching the holding of the Local Board, an administrative agency, and thereby prevent a review of the actions of the administartive agency, particularly in view of the contentions of petitioner that said Board acted in an arbitrary and capricious manner and in clear violation of his constitutional rights. And the ruling of the trial court, as aforesaid, touching the construction and applicability of Federal laws and Federal procedure, involves the following reasons, on which petitioner relies for the allowance of this writ of certiorari:

(A) That the Supreme Court of the United States has never passed upon the question involved in the within petition with reference to the application of the Selective Training and Service Act of 1940, as amended, and, due to their being no direct decision from this Court, wide-spread confusion prevails touching the applicability of same;

(B) That the Supreme Court of the United States has held that administrative agencies are subject to a review of their findings in cases other than Selective Service cases, in which the same principle of law is recognized as sound and proper.

Union Bridge Co. V. United States
(204 U. S. 364)
Monongahlea Bridge Co. V. United States
(216 U. S. 177)

The ruling of the Supreme Court in the cases cited is in direct conflict with the ruling of the trial court in the instant case.

(C) That numerous District Courts over the United States have adhered to decisions similar to the trial court in the pending case, all of said decisions of said District Courts being in direct conflict with the decision of the Supreme Court of the United States as hereinbefore set out, viz:

Fletcher v. United States
(129 Fed. 2nd 262)
(5th C. C. A.)

Johnson v. United States
(126 Fed. 2nd 242)
(8th C. C. A.)

United States v. Grieme
United States v. Sadlock
(128 Fed. 2nd 811)
(3rd C. C. A.)

Rase v. United States
(129 Fed. 2nd 204)
(6th C. C. A.)

Buttecalli v. United States
(130 Fed. 2nd 172)
(5th C. C. A.)

These cases present a confused situation that should be settled, once and for all, by the Supreme Court of the United States.

(D) It is to be noted that the presiding judge held that no constitutional rights of petitioner were violated or impaired. (R. 208).

WHEN THE CONSTITUTIONAL QUESTIONS WERE RAISED AND HOW

All the constitutional questions herein set out were urged and insisted upon by petitioner in the trial court, in his bill of exceptions of the United States Circuit Court of Appeals, and petitioner here and now insists upon same in this Court.

WHEREFORE, petitioner prays that this petition for writ of certiorari to reviewed the judgment of the United States Circuit Court of Appeals, Fifth Circuit, in case numbered and entitled on its docket No. 10620, Terry Linnell Harper versus United States of America, be granted and that the United Circuit Court of Appeals, Fifth Circuit, be notified of the filing of this petition and action taken thereon, to the end that said cause may be reviewed and determined by this Court and that the judgment of the United States Circuit of Appeals, Fifth Circuit, in said case may be reversed, and that

petitioner have such other and further relief to which he may be entitled in the premises.

Respectfully submitted,

Colon J. Cogdell, Brunswick, Ga.
H. F. Rawls, Nahunta, Georgia.